IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 2797 of 2000

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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AEROTHERM PRODUCTS - Petitioner(s)
Versus
NITINKUMAR KANAYALAL SHAH - Respondent(s)

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Appearance :
MR LD SONGARA for Petitioner,
MR UT MISHRA for Respondent,

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CORAM : HONOURABLE MR.JUSTICE R.S.GARG

Date : 13/08/2007

ORAL JUDGMENT

1. Heard Mr.L.D. Songara, learned counsel for the petitioner and Mr.U.T. Mishra, learned counsel for the respondent.

2. Being aggrieved by the award dtd.5/10/1999 passed by the Presiding Officer, Labour Court, Ahmedabad in Reference (LCA) No.2322 of 1992, industry is before this court with a submission that the court below was unjustified in directing reinstatement with 100% back wages in favour of the respondent.

3. Mr.L.D. Songara, learned counsel for the petitioner, after taking me through the award, submitted that as the post was abolished and no work was left for the workman, the petitioner had issued a notice to the workman that his services were no more required, therefore, the workman may come and collect his dues. According to him, this would amount to compliance of Sec.25(F) of the Industrial Disputes Act.

4. Mr.Mishra, learned counsel for the respondent, on the other hand, supported the award and submitted that the court below was justified in directing reinstatement.

5. From the pleadings of the parties, it does not appear that the dispute relating to the fact that the respondent was a

workman or not, was ever raised before the Labour Court, however, the only dispute was that whether the removal of the respondent workman would amount to illegal retrenchment or a discharge in accordance with law.

6. Sec.25(F) of the Industrial Disputes Act clearly provides that before removing a particular person / workman, certain formalities are required to be observed, law provides that if such formalities are not observed, then, removal would amount to illegal retrenchment.

7. In the present case, the court below was absolutely justified in observing that the requirements were not observed in accordance with law.

8. Once it is held that the removal amounted to illegal retrenchment, except in extraordinary circumstances, reinstatement would be rule.

9. After hearing the learned counsel for the parties, this Court is of the opinion that the award of 100% back wages, in the facts and circumstances of the case and specially that the reference is being allowed on a

technical ground, I am of the opinion that the workman would be entitled to 50% back wages from the date of his removal till 5/10/1999 i.e. the date of the award.

10. On the merits in relation to the reinstatement, the petition is dismissed, however, with the above modification in the award relating to back wages.

11. The petition is disposed of accordingly. Interim relief, if any, is vacated. There shall be no orders as to costs. Interim relief.

(R.S. GARG, J.)

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